



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

[Docket DARS-2018-0048]

RIN 0750-AJ95

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Acquisition Streamlining" (DFARS Case 2018-D033)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove DFARS clause 252.211-7000, Acquisition Streamlining, and the associated clause prescription at DFARS 211.002-70. This clause is included in all solicitations and contracts for systems acquisition programs and

requires contractors to: prepare acquisition streamlining recommendations in accordance with the performance work statement; format and submit the recommendations in accordance with the contract data requirements list of the contract; and include the clause in all subcontracts valued over \$1.5 million that are awarded in the performance of the contract. DoD may accept, modify, or reject the contractor's recommendations.

This clause was added to the DFARS to implement a requirement of DoD Directive (DoDD) 5000.43, Acquisition Streamlining. DoDD 5000.43 has been cancelled and replaced by DoD Instruction 5000.02, Operation of the Defense Acquisition System, which requires contractors to submit acquisition streamlining recommendations. Additionally, Federal Acquisition Regulation (FAR) subpart 7.1, Acquisition Plans, already includes acquisition streamlining and industry engagement as considerations to be made when preparing a written acquisition plan. As the implementing DoDD has been cancelled and FAR subpart 7.1 addresses acquisition streamlining, this DFARS clause is unnecessary and can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American

people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 35741 on August 1, 2017, and requested public input. The following public comment was received on this clause:

Comment: The respondent states that the clause is ineffective, because a contractor who has already been awarded a contract may have a vested interest in preserving the contract, as awarded, and may not be the best source for innovation. Instead, the respondent suggests that targeted surveys sent to both successful and unsuccessful offerors after award may be more effective than a mandatory clause for a single awardee.

Response: DoD will continue to encourage industry participation during the design and development of contract requirements and through other methods.

The DoD Task Force reviewed the requirements of DFARS clause 252.211-7000, Acquisition Streamlining, and determined that the DFARS coverage was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes obsolete DFARS clause 252.211-7000, Acquisition Streamlining. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete requirement from the DFARS.

IV. Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to

assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211-DESCRIBING AGENCY NEEDS

211.002-70 [Removed]

2. Remove section 211.002-70.

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211-7000 [Removed and Reserved]

3. Remove and reserve section 252.211-7000.

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